

**IN THE UNITED STATES DISTRICT COURT FOR THE
NORTHERN DISTRICT OF NEW YORK**



GENERAL ORDER NO. 43

In the Matter of:

**MAGISTRATE JUDGES ORDER DIRECTING FILING OF
ANSWER, ADMINISTRATIVE RECORD, BRIEFS, AND
PROVIDING FOR ORAL HEARING ON APPEAL FROM
SOCIAL SECURITY BENEFITS DECISION**

Dated: January 30, 1998

Supersedes the May 20, 1996 General Order.

Appeals from a final decision of the Secretary of Health and Human Services denying plaintiff's claim for Social Security benefits have been referred to one of the Magistrate Judges pursuant to this Court's Local Rule 72.3(d) and either 28 U.S.C. Section 636(b) for review and recommendation as to disposition or 28 U.S.C. Section 636(c) for all further proceedings and entry of final judgment, and it is hereby

ORDERED, that after service of the Summons and Complaint has been effected, the defendant shall file either an answer, together with a certified copy of the transcript of the administrative proceedings, within 100 days of said service, or a motion to dismiss within 60 days of said service, and it is further

ORDERED, that if a motion to dismiss is denied, the defendant shall file an answer, together with a certified copy of the transcript of the administrative proceedings, within 30 days of service of said denial, and it is further

ORDERED, that after the answer is filed counsel for the parties or the party if appearing pro se submit briefs in accordance with the following requirements:

- (1) Within forty-five (45) days from the filing of the answer, plaintiff shall serve and file a brief setting forth all errors which plaintiff contends entitle plaintiff to relief. The brief shall contain under the appropriate headings and in the order here indicated:
 - (a) A statement of the issues presented for review, set forth in separate numbered paragraphs.

- (b) A statement of the case. This statement should indicate briefly the course of the proceeding and its disposition at the administrative level and should set forth a general statement of the facts. The statement of the facts shall include plaintiff's age, education, work experience and a summary of other evidence of record. Each statement of fact shall be supported by reference to the page in the record where the evidence may be found.
 - (c) An argument. The argument may be preceded by a summary. The argument shall be divided into sections separately treating each issue and must set forth the contentions of plaintiff with respect to the issues presented and reasons therefor. Each contention must be supported by specific reference to the portion of the record relied upon and by citations to statutes, regulations, and cases supporting plaintiff's position. Cases from other districts and circuits should be cited only in conjunction with relevant cases from this jurisdiction or if authority on point from this jurisdiction does not exist. Citations to unreported district court opinions must be accompanied by a copy of the opinion.
 - (d) short conclusion stating the relief sought. The issues before the Court are limited to the issues properly raised in the briefs.
- (2) Within forty-five (45) days after service of plaintiff's brief, defendant shall serve and file a brief which responds specifically to each issue raised by plaintiff. Defendant's brief shall conform to the requirements set forth above for plaintiff's brief, except that a statement of the issues and a statement of the case need not be made unless defendant is dissatisfied with plaintiff's statement thereof.

IT IS FURTHER ORDERED, that upon the receipt of the defendant's Brief as provided herein, the Clerk shall forward the entire file to the assigned Magistrate Judge. The Magistrate Judge will treat the proceeding as if both parties had accompanied their briefs with a motion for judgment on the pleadings pursuant to Rule 12(c) of the Federal Rules of Civil Procedure, and it is further

ORDERED that when a plaintiff wishes to support an appeal with new evidence, such evidence must be accompanied by a legal memorandum setting forth an argument for the acceptance of the new evidence based upon the three-part showing required by the regulations. First, a plaintiff

must show that the evidence he or she wishes to submit is "new" and not simply restating information that is already in the record. Second, a plaintiff must show that the new evidence is "material." In other words, it must be shown that the evidence is relevant to the plaintiff's condition during the time period for which benefits were denied and that the evidence helps to prove that the plaintiff is in fact entitled to benefits. Third, the memorandum must include a statement setting forth good cause for the failure to present the evidence earlier. Tirado v. Bowen, 842 F.2d 595, 597 (2d Cir. 1988). See also 42 U.S.C. § 405(g) (1995). The new evidence and accompanying memorandum shall be filed and a copy shall be served upon the counsel for the Commissioner of Social Security, the United States Attorney. Upon receipt, the United States Attorney will have THIRTY (30) DAYS to file opposition papers. And it is further

ORDERED, that generally no oral argument will be heard. If, however, an oral hearing is requested and scheduled before the assigned Magistrate Judge, notice of same will be sent to the parties, and at said hearing counsel should be fully prepared to argue the facts, issues, and legal contentions in this case, and it is further

ORDERED, that the Clerk shall serve a copy of this Order upon counsel for the parties herein upon the filing of the complaint, and it is further

ORDERED, that the Clerk shall notify the parties of the name of the Magistrate Judge assigned to their proceeding.

ORDERED, that this General Order shall apply to all United States Magistrate Judges in the Northern District of New York.

DATED: January 30, 1998

s/ _____

**Ralph W. Smith, Jr.
Chief United States Magistrate Judge**